United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2441.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. 17 Boxes of Cheese. Decree of condemnation by default. Product ordered sold.

MISBRANDING OF CHEESE.

On May 31, 1912, the United States Attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 17 boxes, each containing one cheese, remaining unsold in the original unbroken packages and in possession of the Kentucky Grocery Co. (Inc.), Louisville, Ky., alleging that the product had been shipped on May 20, 1912, by J. F. Rappel & Co., Manitowoc, Wis., and transported from the State of Wisconsin into the State of Kentucky, and charging misbranding in violation of the Food and Drugs Act. The product was labeled: "Wisconsin Full Cream Cheese Pioneer Whole Milk Made expressly for Kentucky Gro. Co., Louisville, Ky. J. F. Rappel & Co., Sole Manufacturers and Distributors, Manitowoc, Wis., Distributors of Daisies, Twins, and Singles, Long Horns, Young-Americas, Squares, all Styles.", and each box also bore a penciled figure, indicating the net weight of the cheese contained therein.

Misbranding of the product was alleged in the libel for the reason that upon each of the boxes there was a penciled number in arabic numerals, which was intended by the manufacturer and shipper of the product to indicate the net weight in pounds of the cheese contained in the packages, and it was the custom of the trade in cheese in the United States to so mark the net weight of cheeses shipped in interstate and intrastate commerce by the use of arabic numerals

alone, and such numerals so appearing without any word or symbol to indicate the words "pounds," were and still are understood by and among the cheese trade of the United States to indicate the net weight in pounds of the cheese contained in such packages, and the product was billed and invoiced at the net weights respectively, as aforesaid indicated in pounds by said penciled numbers upon the original packages respectively, whereas, in truth and in fact, the actual net weight of the cheese contained in each of the original packages was less than the weight as aforesaid indicated upon the outside of the packages by the use of said arabic numerals.

On October 14, 1912, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was further ordered that the product should be sold by the United States marshal. On February 5, 1913, an amended order of sale was entered in the case, authorizing the sale of the product, after advertisement, at public auction to the highest bidder.

WILLIS L. MOORE, Acting Secretary of Agriculture.

Washington, D. C., March 3, 1913. 2441

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